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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

SEAN L. GILBERT, KEEYA MALONE,
KIMBERLY BILBREW, CHARMAINE B.
AQUINO, on behalf of themselves and all
persons similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A., et al.,

Defendants.

Case No. 4:13-cv-01171-JSW

**DECLARATION OF TIM MADSEN IN
SUPPORT OF THE MONEYMUTUAL
DEFENDANTS' AND MONTEL
WILLIAMS' OPPOSITION TO
PLAINTIFFS' MOTION TO CERTIFY
CLASSES [CORRECTED TO STATE
DATE AND PLACE OF EXECUTION]**

Date: January 8, 2016

Time: 9:00 A.M.

Dept. 5

Hon. Jeffrey S. White, District Judge

1 TIM MADSEN declares as follows:

2 1. I am President of Defendant PartnerWeekly, LLC ("PartnerWeekly"). I have personal
3 knowledge of the facts stated herein. If required, I could and would testify competently under oath
4 thereto.

5 2. PartnerWeekly's business consists of obtaining and offering 'leads' – information
6 concerning persons who have identified themselves over the internet as interested in obtaining short-
7 term personal loans – via a real-time, electronic system to potential lenders who have contracted with
8 PartnerWeekly for the opportunity to review and potentially acquire leads meeting parameters
9 established by individual lenders in their own discretion.

10 3. PartnerWeekly obtains such leads from three primary sources. Some leads are
11 obtained through moneymutual.com, a website owned by MoneyMutual LLC, an affiliate of
12 PartnerWeekly. Consumers can submit information by filling out a form on the MoneyMutual
13 website. Those leads are received by PartnerWeekly almost immediately through a real-time
14 electronic system.

15 4. Other leads are provided to PartnerWeekly by independent, third-party 'affiliate'
16 website operators, described by PartnerWeekly as Publishers, with whom, after screening,
17 PartnerWeekly contracts to receive leads through real-time electronic systems. Those leads also are
18 received by PartnerWeekly almost immediately through real-time electronic systems. In addition,
19 while leads generated by MoneyMutual are provided only to PartnerWeekly, independent Publishers
20 are able to sell leads to other, independent lead generators as well as to PartnerWeekly. Some of those
21 other third-party lead generators are also Publishers contractually affiliated with PartnerWeekly, so
22 that a lead generated by one Publisher may be received by PartnerWeekly not only from that
23 affiliated Publisher, but in real time from other contractually-affiliated Publishers who have acquired
24 that lead from the original lead generator. Consequently, a lead originating from information
25 submitted by a consumer to one affiliated Publisher may be received almost simultaneously in
26 PartnerWeekly's system from multiple other affiliated Publishers; in fact, there is no assurance that
27 the original website to which consumer information was actually submitted is itself a PartnerWeekly-
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1 affiliated Publisher, and therefore may not itself be the source of a lead to PartnerWeekly. Since
2 multiple copies of the original lead may appear in PartnerWeekly's system as originating from
3 different Publishers, each constitutes a separate lead which will be circulated in real-time to potential
4 lenders under contract with PartnerWeekly, within the span of a very few minutes.

5 5. Finally, some affiliated Publishers do not maintain regular websites with forms which
6 can be filled out by potential borrowers, but only maintain internet pop-ups or banners. These
7 Publishers redirect persons who click on the banner or pop-up to an internal web page maintained by
8 PartnerWeekly which includes the same form as that on the MoneyMutual website, to be filled out by
9 a consumer interested in submitting information to be connected with a potential short-term lender.
10 These Publishers also may redirect to other lead generation websites as well.

11 6. PartnerWeekly offers leads for review and acquisition only to screened lenders who
12 have contracted with PartnerWeekly. A true and correct copy of the proprietary PartnerWeekly
13 contractual form which lenders must sign if they wish to review and acquire leads from
14 PartnerWeekly, is attached as Exhibit A hereto. Paragraph 7, entitled Use of Lead Data, imposes
15 numerous obligations on contracting lenders with regard to their use of lead data, including a
16 prohibition on marketing anything other than loans to leads. If a lender is offered a lead but does not
17 accept it, the lender is obligated to "wipe, erase or otherwise delete" the lead and associated lead data
18 from its systems. The lender is prohibited from disclosing, reselling or using the lead for any other
19 purpose than fulfilling a transaction and following up with the person who is the subject of the lead.
20 In Paragraph 8, the contracting lender also makes numerous representations and warranties
21 concerning, among other things, the safeguarding and security of lead information and, if acquiring
22 leads generated by MoneyMutual (as opposed to leads generated by affiliate Publishers), for
23 compliance with the MoneyMutual Code of Lender Conduct. PartnerWeekly requires this condition
24 only for leads generated from moneymutual.com because it has no ability to supervise or control on
25 an ongoing basis statements which may be made on affiliated Publisher websites. Neither
26 PartnerWeekly nor MoneyMutual have any contact at all with prospective borrowers who create
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1 leads by submitting information to affiliated Publishers, and therefore make no representations or
2 statements of any kind to those persons.

3 7. PartnerWeekly offers leads in its system only to contracting lenders, and only pursuant
4 to the terms and conditions in its contractual form attached as Exhibit A hereto. However,
5 PartnerWeekly has no knowledge concerning to whom affiliated Publishers may offer leads other
6 than PartnerWeekly itself, and the terms and conditions on which such leads may be offered to other
7 parties.

8 8. As noted, PartnerWeekly screens lenders wishing to contract with PartnerWeekly. In
9 addition, PartnerWeekly monitors lenders in various ways, including in particular through consumer
10 complaints which, if received, are followed-up with the lender. Neither Selling Source,
11 PartnerWeekly nor MoneyMutual have ever been copied by any California governmental entity with
12 any cease-and-desist orders issued against short-term lenders which may have done business with
13 PartnerWeekly, and are not otherwise informed of them. are

14 9. PartnerWeekly maintains an ongoing electronic database which includes all leads
15 which have been offered since September, 2009 to contracting lenders through PartnerWeekly's real-
16 time electronic system. The database reports generated for this case include basic identifying
17 information concerning the lead itself, including the person's name, address, phone numbers and the
18 email address from which the person submitted his or her information; the date and time when the
19 lead is received by PartnerWeekly (again, because all such transactions are conducted in real-time via
20 electronic systems, leads are received by PartnerWeekly very shortly after information is submitted to
21 a website); information concerning the source of the lead to PartnerWeekly (either MoneyMutual or
22 an affiliated Publisher); whether the lead "FAILED," meaning that it was not acquired by any lender
23 to whom the lead was circulated, or was "COMPLETED," meaning the lead was acquired by a lender
24 to whom it was circulated and, if so, the identity of the contracting lender as recorded by
25 PartnerWeekly.

26 10. A lead recorded in the database as either "FAILED" or "COMPLETED" is not
27 recirculated by PartnerWeekly.
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1 11. Any lead in the database shown as having originated from MoneyMutual is the result
2 of information submitted on the date and at the time shown for that lead on the database. When a
3 lead is submitted through one or more Publishers, the database typically shows a group of
4 submissions very closely related in date and time from different, non-MoneyMutual publishers. The
5 group may or may not include the original website to which the consumer submitted information,
6 depending on whether or not the website operator itself is a PartnerWeekly-affiliated Publisher. An
7 example is provided below.

8 12. The PartnerWeekly database extends only to showing whether leads were or were not
9 acquired by contracting lenders. It does not show whether a loan ultimately resulted from the
10 acquisition of a lead and, if so, the terms, conditions and subsequent history and repayment of any
11 such loan.

12 13. Since approximately 2013, most of the so-called "offshore lenders" identified in
13 Plaintiffs' Fourth Amended Complaint as having acquired leads from any of the MoneyMutual
14 Defendants, have gone out of business, and to the best of my knowledge no longer exist.

15 14. Attached as Exhibit B hereto is a true and correct copy of an excerpt from the
16 PartnerWeekly database for leads created by information submitted by Plaintiff Keeya Malone, also
17 marked as Deposition Exhibit 3. It reflects that Ms. Malone made six separate submissions of
18 information, three to moneymutual.com or its related website, callmoneymutual.com, and three to
19 other Publishers. Five of the six leads were acquired by contracting lenders. The last submission of
20 information for a potential loan was made by Ms. Malone on September 27, 2014 through
21 moneymutual.com, and the lead was acquired by SCIL, Inc., dba Speedy Cash. We have no
22 knowledge of the subsequent history concerning the "COMPLETED" leads.

23 15. Attached as Exhibit C hereto is a true and correct copy of an excerpt from the
24 PartnerWeekly database for leads created by information submitted by Plaintiff Kimberly Bilbrew,
25 also marked as Deposition Exhibit 16. This excerpt includes an example of the circumstances I have
26 described above, concerning information submitted to an affiliated Publisher which was sold as a lead
27 to PartnerWeekly by several affiliated Publishers: The database shows receipt of five leads
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1 concerning Ms. Bilbrew within a span of two minutes on January 29, 2013 from five different
2 affiliated Publishers, all of which "FAILED" (meaning that they were not acquired by any lender).
3 These five leads would have been the result of one information submission by Ms. Bilbrew, although
4 it is impossible for us to determine whether the original website to which Ms. Bilbrew submitted
5 information was itself an affiliated Publisher. Three other submissions by Ms. Bilbrew through
6 moneymutual.com, on January 30, February 4 and April 1, 2013, respectively, were acquired as leads
7 by three lenders, Ms. Bilbrew again submitted information through moneymutual.com on July 22,
8 2013, but that lead "FAILED" to find a buyer.

9 16. Attached as Exhibit D hereto is a true and correct copy of an excerpt from the
10 PartnerWeekly database for leads created by information submitted by Plaintiff Charmaine Aquino,
11 also marked as Deposition Exhibit 36. It reflects that Ms. Aquino never submitted information for a
12 loan through moneymutual.com, and that PartnerWeekly only received leads concerning Ms. Aquino
13 from affiliated Publishers. It can be read in the same manner as described above for the database
14 excerpts concerning Plaintiffs Malone and Bilbrew.

15 17. Attached as Exhibit E hereto is a true and correct copy of an excerpt from the
16 PartnerWeekly database for leads created by information submitted by Plaintiff Sean Gilbert (except
17 for the first two leads on the first page, which refer to another "Sean Gilbert"), also marked as
18 Deposition Exhibit 50. It can be read in the same manner as described above for the database
19 excerpts concerning Plaintiffs Malone and Bilbrew.

20 18. The original of this Declaration was executed on December 17, 2015 at Kansas City,
21 Missouri. This corrected Declaration is being submitted to correct that accidental omission.

22 I declare under penalty of perjury under the laws of the State of Missouri that the foregoing is
23 true and correct. Executed on December 21, 2015 at Kansas City, Missouri.

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25 
26 Tim Madsen